

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
ISLAND COUNTY TO EDWARD M.
COSTELLO

MRS. ALICE G. NEWLIN AND THE
ESTATE OF CLARENCE J. NEWLIN,

Appellants,

v.

ISLAND COUNTY AND EDWARD M.
COSTELLO,

Respondents.

SHB No. 79-31

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of substantial development permit, came before the Shorelines Hearings Board, Nat Washington, Chairman, Chris Smith, James S. Williams, and David Akana (presiding), at a formal hearing in Seattle on January 14, 1980.

Appellants were represented by their attorneys, Jeff Eustus and Roger M. Leed; respondents were represented by Ted D. Zylstra.

Repondent's motion to dismiss was heard and a ruling thereon was

1 taken under advisement by the Board.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Edward Costello applied for a substantial development permit to
7 subdivide approximately 26 acres of land into 26 residential lots.
8 The site is located on Central Whidbey within the Coupeville-Longpoint
9 area, and is on shoreline adjacent to Penn Cove and Saratoga Passage.
10 Timber and natural vegetation grow on the site. The proposed
11 substantial development includes building sites, roads, improved beach
12 access, and a storm water discharge system.

13 II

14 The site is adjacent to a historic site known as the John L.
15 Kireth residence and farm which was constructed in 1867 by John Kineth
16 and is one of the original homesites on the island. Kineth farmed
17 potatoes and raised sheep until about 1900. Appellants are the
18 successors in interest of the farm. Their property is also the
19 location of the Chief Snaklin grave site and monument, which is
20 located about 775 feet from the proposed project site.

21 The site is included within an area established by the county as a
22 "Historic Preservation District." A "Historic Preservation Advisory
23 Committee" was appointed for the district and acted in an advisory
24 capacity to the Board of County Commissioners, Planning Commission,
25 and other county departments as to historical matters relating to the
26 instant shoreline permit.

27 FINAL FINDINGS OF FACT,
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1 III

2 The proposed project would partially change the pastoral ambiance
3 of the farm to the extent that it can be seen or heard at the farm,
4 and create a potential source for future trespass. Portions of future
5 homes on the proposed development on lots 9 through 13 would be
6 visible from the Kineth house. The proposed plat was reviewed the
7 Central Whidbey Historical Preservation District Advisory Committee
8 which recommended approval of the project. Additional consideration
9 by that committee will be made at the time the individual property
10 owners submit their building plan for construction in the historically
11 sensitive area.

12 IV

13 Appellants are concerned that incidence of trespass and theft will
14 increase with development, and seek a fence from the developer to
15 mitigate the potential for it. The construction of fencing along the
16 more than 1300 foot boundary between the project site and the Kineth
17 farm would deter some persons and some dogs from the site from
18 trespassing upon the appellants' property.

19 V

20 Appellants' use and enjoyment of the farm would be only minimally
21 impacted by the proposed project.

22 VI

23 On March 14, 1979, the county issued a draft environmental impact
24 statement (EIS) for the proposed action.

25 On April 10, 1979, the Island County Planning Commission

1 considered respondent's application for a substantial development
2 permit and recommended approval thereof with certain conditions, the
3 third of which stated: "Full adherence to mitigating measures as
4 proposed in the Environmental Impact Statement." Subsequently,
5 Findings of Fact, Conclusions of Law and Order were entered on May 8,
6 1979.

7 On May 25, 1979, the county issued its final EIS.

8 On June 4, 1979, the Board of County Commissioners for Island
9 County considered the substantial development permit application and
10 approved a permit with the conditions recommended by the Planning
11 Commission. The substantial development permit (Exhibit A-3) was sent
12 to the Department of Ecology (DOE) and Attorney General on June 13,
13 1979. Sometime after June 13, and before June 18, notations on the
14 substantial development permit were added referring to an "Attachment
15 A", which attachment was a reproduction of mitigating measures set
16 forth in the draft EIS. According to planning department records, the
17 DOE received the notated permit (Exhibit A-4) on June 18, 1979.
18 Appellants filed their appeal with this Board on July 16, 1979.

19 VII

20 Any Conclusion of Law which should be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these findings the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The substantial development permit issued on June 4, 1979, was

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 based upon the recommendations made by the Planning Commmission and
2 upon information available to the Planning Commision at that time.
3 The second substantial development permit, issued after June 4, 1979,
4 simply references the mitigating measures from the information
5 previously available to the Planning Commission. For purposes of this
6 appeal, tne date that the DOE received the second permit was June 18,
7 1979. Appellant's request for review was filed with this Board on
8 July 16, 1979, and was timely. Respondent's motion to dismiss for
9 failing to timely file should be and is denied.

10 II

11 The Environmental Impact Statement was not shown to be inadequate.

12 III

13 Appellants did not show that fencing and landscaping along the
14 boundary between their property and the Costello's property was
15 necessary or otherwise required under the Shoreline Management Act
16 (ch. 90.58 RCW) to mitigate impacts from the proposed development.
17 Consequently, Island County's decision which did not incorporate
18 fencing and landscaping measures in the permit was not shown to be
19 erroneous or otherwise inconsistent with the provisions of chapter
20 90.58 RCW.

21 IV

22 Any Finding of Fact which should be deemed a Conclusion of Law is
23 hereby adopted as such.

24 From these Conclusions the Board enters this
25

ORDER

The substantial development permit issued by Island County to Edward M. Costello is affirmed.

DATED this 27th day of February, 1980.

SHORELINES HEARINGS BOARD

Nat W. Washington
NAT W. WASHINGTON, Chairman

Chris Smith
CHRIS SMITH, Member

Jim S. Williams
JIM S. WILLIAMS, Member

David A. Akana
DAVID A. AKANA, Member